

Rockwood & Company and W. H. Gonyea Trust No. 1-17 d/b/a Timber Products Co. and Local 3-6 International Woodworkers of America, AFL-CIO, CLC. Cases 36-CA-4795 and 36-CA-4826

30 September 1986

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
JOHANSEN AND BABSON

On 27 December 1985 Administrative Law Judge Burton Litvack issued the attached decision. The Respondent filed exceptions and a motion to abate, along with a supporting brief, and the Charging Party filed cross-exceptions and an answering brief. The General Counsel filed a response to the Respondent's motion to abate.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs¹ and has decided to affirm the judge's rulings, findings,²

¹ The Respondent filed a motion to abate in which it argues that "enforcement" in this case ought to be delayed until such time as Case 36-CA-4576 (277 NLRB 769 (1985)), is resolved. The Respondent asserts that, should a motion for reconsideration that was pending before the Board in that case at the time of the filing of the motion to abate in the instant proceeding be denied, it expected to appeal the Board's decision to the United States Court of Appeals for the Ninth Circuit. The Respondent argues that a reversal of the Board's decision in the earlier proceeding would cast into doubt the validity of the judge's decision in this case. In addition, the Respondent questions whether the present decision is a nullity because of the merger of the Charging Party, Local 3-6, International Woodworkers, and Local 3-436, International Woodworkers, subsequent to the hearings in both proceedings. The Respondent had also raised this union-successorship issue in its motion for reconsideration in Case 36-CA-4576.

On 21 April 1986 the Board issued an unpublished order denying the Respondent's motion for reconsideration in Case 36-CA-4576. As noted in that order, the Board has found the issue of union successorship appropriate for determination in a backpay proceeding, and the question of whether Local 3-436, International Woodworkers, is the successor to Local 3-6, International Woodworkers, was deferred to the compliance stage of the proceeding. See *Sheet Metal Workers Local 13*, 266 NLRB 59, 60 (1983). We find that this issue, which arose subsequent to the occurrence of the Respondent's unfair labor practices herein, does not warrant abatement of our review of the judge's decision in this proceeding. Finally, the fact that the Respondent may seek court review of our decision in the earlier proceeding does not warrant suspending action in this case. Cf. *Keller Aluminum Chairs Southern*, 173 NLRB 947 (1968), and cases cited therein at fn. 14 (the pendency of collateral litigation does not suspend a respondent's duty to bargain under Sec. 8(a)(5)). Accordingly, we deny the Respondent's motion to abate.

² We correct the judge's findings to reflect that David Paxson (rather than David Paton) and Ralph Southard (rather than Ralph Southam) were former strikers who were recalled after 13 September 1984 and were assigned as seniority dates the dates on which they were recalled to permanent positions.

³ In adopting the judge's conclusion that the Respondent violated Sec. 8(a)(5) and (1) of the Act by withdrawing recognition from the Union at a time when it was unlawfully refusing to execute and abide by a previously agreed-upon, enforceable contract, we find it unnecessary to pass on his discussion regarding whether employee petitions caused the Respondent to have a good-faith doubt of continuing majority status or what the Respondent's rights would be in the absence of a contract

and conclusions³ and to adopt the recommended Order as modified.⁴

The judge found that the Respondent violated Section 8(a)(3) and (1) of the Act by failing to recall former strikers Terry Ragan, Gerald Clouse, and Terry Johnson in late October 1984 and combining them with previously recalled former striker Tim Smith, who had applied for the position, to form a newly established swing shift spreader crew. The unreinstated strikers were entitled to reinstatement to any available jobs for which they were qualified, and the Respondent had never brought in an outside crew to operate the spreader machines before the strike but had always formed new crews from its existing employee complement. Based on his assessment of the credibility of the witnesses, the judge concluded that the Respondent had failed to establish that the unreinstated former strikers and Smith were not qualified to do the work, as the Respondent claims, and thus found that the Respondent failed to sustain its burden of proof that its failures to reinstate former strikers Ragan, Clouse, and Johnson to the spreader crew were for legitimate and substantial business reasons. The evidence further indicated that the Respondent would not have utilized one, two, or three of the named individuals and combined them with new hires to form a spreader crew, and considered them only as a "crew" rather than individually. Thus, previously reinstated former striker Smith was also discriminated against by the Respondent's refusal to utilize the unreinstated former strikers as he would have made up the fourth member of the crew.

As found by the judge, the Respondent decided to bring in an outside crew and then, because of its obligation to instead form a crew from the unreinstated strikers, attempted to justify this action after the fact by claiming that the unreinstated strikers and Smith were unqualified. Accordingly, we agree with the judge, for the reasons stated by him, that the Respondent discriminated against Ragan, Clouse, and Johnson in violation of Section 8(a)(3) and (1) of the Act by failing to reinstate them to available spreader crew positions for which they were qualified, and discriminated against reinstated former striker Smith by failing to transfer him to fill out the crew of former strikers. We disagree, however, with the judge's recommended remedy for these violations.

The judge recommended that Ragan, Clouse, and Johnson be made whole for any wages and

⁴ Consistent with his unfair labor practice findings, we have added to the judge's recommended Order a specific requirement that the Respondent cease and desist from limiting the Union's right of access to its plant

benefits lost from 22 October 1984 until the date of their eventual reinstatements⁵ and that Ragan, Clouse, Johnson, and Smith be made whole for any wages lost as a result of being deprived of the opportunity to work on the spreader machine from 22 October 1984 until the date of his decision. The judge further recommended that the Respondent be ordered to afford these four employees preferential consideration for transfer to spreader machine jobs if they so desire. The Charging Party excepted to the judge's recommendation that backpay be cut off as of the date of his decision, and to his failure to order the Respondent to offer the discriminatees immediate offers of transfers to spreader machine jobs. We find merit to the Charging Party's exceptions.

Backpay to an employee whom an employer has wrongfully refused to reinstate normally terminates on the offer of reinstatement to the employee, and an employee wrongfully denied an opportunity for promotion is entitled to backpay until he is given the opportunity for promotion that should have been accorded him.⁶ We perceive no reason here why backpay should be cut off as of the date of the judge's decision, and do not adopt that recommendation. Rather, we find that backpay for the four discriminatees, to be computed in the manner set forth by the judge, should run from 22 October 1984 when they were wrongfully denied the opportunity to form a spreader crew until the Respondent offers each an opportunity to transfer to a spreader position. Further, we agree with the Charging Party that Ragan, Clouse, Johnson, and Smith are entitled to immediate offers to form a new spreader crew, displacing, if necessary, any incumbent swing shift spreader machine crew. Only in this way can the status quo ante be restored.

In addition, in order to remedy unilateral changes instituted by the Respondent about 13 September 1984, the judge recommended that the Respondent reinstate the terms and conditions of employment of the employees that were in effect immediately prior to those changes. However, as we have found in a prior decision that the Respondent was obligated to give retroactive effect to a collective-bargaining agreement reached by the parties on 11 October 1983, which did not expire until 31 May 1986, we shall instead require that the Respondent reinstate the terms and conditions of

employment provided by that contract as ordered in our prior decision.⁷ The employees shall be made whole in a manner consistent with Board policy as stated in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest thereon as prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Rockwood & Company and W. H. Gonyea Trust No. 1-17 d/b/a Timber Products Company, Medford, Oregon, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(b) and re-letter the subsequent paragraphs.

"(b) Unilaterally, without giving prior notice to or affording the Union an opportunity to bargain, limiting the Union's right of access to its plant."

2. Substitute the following for paragraph 2(b).

"(b) Reinstate the terms and conditions of employment of the employees in the above appropriate unit that are provided in the parties' collective-bargaining agreement reached on 11 October 1983, and make said employees whole for any wages and benefits lost, in the manner set forth in the decision, as a result of its unlawful unilateral changes."

3. Substitute the following for paragraph 2(e).

"(e) Reimburse employees Gerald Clouse, Terry Ragan, and Terry Johnson for any wages or other benefits lost in the manner set forth in the remedy section of the judge's decision; make Clouse, Ragan, Johnson, and Tim Smith whole for any wages lost for the period of time each was denied work on the spreader machine in the manner set

⁵ It would appear from record testimony that Terry Johnson may have been reinstated to a permanent position on 22 October 1984, and that Gerald Clouse was placed in a temporary position without full employee benefits on that date. We leave determinations regarding benefits which may have been lost by these employees by virtue of their having been denied the spreader machine jobs to the compliance stage of the proceeding.

⁶ *Bralco Metals*, 227 NLRB 973 (1977); *Hollywood Brands*, 169 NLRB 691 (1968).

⁷ In *Timber Products Co.*, 277 NLRB 769 (1985), we ordered the Respondent, inter alia, to execute and give retroactive effect to the collective-bargaining agreement reached by the parties on 11 October 1983 on request of the Union. Our order further provided, should no request be made by the Union, that the Respondent bargain, on request, with the Union and embody in a signed agreement any understanding reached. The Charging Party then filed a motion to amend order, requesting that the Board add to its order a provision specifically requiring the Respondent to make whole employees for losses incurred as a result of the Respondent's failure to sign and abide by the terms of its agreement with the Union. Noting that its previous order encompassed within its terms the requirement that the employees be made whole for losses suffered as a result of the Respondent's unlawful conduct, the Board, nonetheless, clarified its order as requested by the Charging Party. Thus, on 21 April 1986, the Board issued an unpublished order clarifying its order by directing that the Respondent execute a collective-bargaining agreement embodying the terms and conditions to which the parties had agreed on 11 October 1983, and apply retroactively the terms of that agreement, making whole employees for losses suffered as a result of its failure to execute and abide by the agreement. In the unpublished order, we noted that the Charging Party's motion indicated that it sought to have the Respondent execute and give retroactive effect to the parties' agreement rather than requesting that the Respondent bargain anew.

forth in the remedy section of the judge's decision; offer each of these employees immediate transfer to the swing shift spreader machine crew, displacing, if necessary, new employees hired to form a swing shift spreader crew on 22 October 1984."

4. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT withdraw recognition from and refuse to recognize and bargain with Local 3-6, International Woodworkers of America, AFL-CIO, CLC, as the exclusive representative for collective bargaining of the following appropriate unit:

All our employees, including temporary and part time employees; excluding office clerical employees, professional employees, guards, and supervisors as defined in the National Labor Relations Act.

WE WILL NOT unilaterally, and without giving prior notice to or affording the Union an opportunity to bargain, limit the Union's right of access to our plant.

WE WILL NOT unilaterally, and without giving prior notice to and affording the above Union the opportunity to bargain, change the terms and conditions of employment of our employees in the above bargaining unit.

WE WILL NOT discriminate against former economic strikers, who were reinstated subsequent to September 13, 1984, by denying them their pre-strike seniority, treating them as new employees, and paying them wages below what they earned prior to the strike.

WE WILL NOT terminate the employment, preferential reinstatement, and seniority rights of former economic strikers who were on layoff status at the time of the 1983 strike, to whom we sent letters soliciting their return during the strike, and who engaged in picketing during the strike, manifesting their intent to join the strike and not return to work.

WE WILL NOT delay the reinstatement of former economic strikers and discriminate against them by not affording them the opportunity of recall to jobs for which they are qualified to perform.

WE WILL NOT terminate the employment, preferential reinstatement, or seniority rights of any former economic strikers.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and, on request, bargain with the above Union as the collective-bargaining representative of the above bargaining unit employees.

WE WILL reinstate the terms and conditions of employment of the above employees that are provided in our collective-bargaining agreement reached with the Union on 11 October 1983, and make these employees whole, with interest, for any wage and benefits lost as a result of our unlawful unilateral changes.

WE WILL restore to each former economic striker who was reinstated subsequent to September 13, 1984, his prestrike company seniority and make him whole, with interest, for any wages and benefits lost as result of our discrimination against him.

WE WILL rescind our termination of the employment, preferential reinstatement and seniority rights of the laid-off individuals who were found to have participated in the 1983 strike; offer immediate and full reinstatement to those who would have been recalled since September 13, 1984; and make the latter employees whole, with interest, for any wages and benefits lost.

WE WILL reimburse, with interest, employees Gerald Clouse, Terry Ragan, and Terry Johnson for any wages or benefits lost as a result of delaying their reinstatement; make Clouse, Ragan, Johnson, and Tim Smith whole, with interest, for any wages lost as a result of not permitting them to form a spreader machine crew in October 1984; and offer the individuals immediate transfer to swing shift spreader machine jobs, displacing, if necessary, new employees hired to form a swing shift spreader machine crew on 22 October 1984.

WE WILL rescind our termination of the employment, preferential reinstatement, and seniority rights of former striker, Jose Acosta; offer him immediate and full reinstatement if he would have been recalled to work subsequent to October 4, 1984; and, in the event of such, make him whole, with interest, for wages lost as a result of our unlawful conduct.

ROCKWOOD & COMPANY AND W. H.
GONYEA TRUST NO. 1-17 D/B/A
TIMBER PRODUCTS CO.

Richard V. Stratton, Esq., for the General Counsel.
Phil Cass, Esq., of Eugene, Oregon, for the Respondent.

Lynn-Marie Crider, Esq., of Gladstone, Oregon, for the Charging Party.

DECISION

STATEMENT OF THE CASE

BURTON LITVACK, Administrative Law Judge. On September 28 and November 1, 1984, respectively, Local 3-6, International Woodworkers of America, AFL-CIO, CLC (the Union) filed an original and a first amended unfair labor practice charge in Case 36-CA-4795 and, on November 28, 1984, and January 15, 1985, the Union filed an original and a first amended unfair labor practice charge in Case 36-CA-4826. Based on the charges, the Regional Director for Region 19 of the National Labor Relations Board, issued an amended consolidated complaint on May 23, 1985, alleging that Rockwood Company and W. H. Gonyea Trust No. 1-17 d/b/a Timber Products Co. (Respondent) engaged in conduct violative of Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act). Respondent timely filed an answer, denying the commission of any unfair labor practices. Pursuant to a notice of hearing, this proceeding was tried before me on June 25 and 26, 1985, in Medford, Oregon. During the trial, all parties were afforded the opportunity to examine and cross-examine witnesses, to offer into the record all relevant evidence, to argue their legal positions orally, and to file posthearing briefs. In fact, all parties filed such briefs, which were carefully considered. Accordingly, based on the record as a whole, including the posthearing briefs and my observation of the demeanor of the several witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is an Oregon partnership with an office and place of business in Medford, Oregon, where it is engaged in the business of manufacturing plywood, particleboard, and other wood products. During the 12-month period immediately preceding the issuance of the instant amended consolidated complaint, which period is representative, Respondent, in the course and conduct of its above-described business operations, sold and shipped goods and products, valued in excess of \$50,000, directly to customers located outside the State of Oregon. Respondent admits that, at all times material, it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

Respondent admits that the Union has been at all times material a labor organization within the meaning of Section 2(5) of the Act.

III. ISSUES

The amended consolidated complaint alleges that Respondent violated Section 8(a)(1), (3), and (5) of the Act by withdrawing recognition from the Union and by unilaterally, without giving notice to the Union or affording it an opportunity to bargain, implementing changes in

the terms and conditions of employment of its employees who were, and continue to be, represented by the Union and changing the status and working conditions of former economic strikers who had made an unconditional offer to return to work. Respondent, on the other hand, asserts that the conduct was lawful inasmuch as it validly withdrew recognition from the Union, as the bargaining representative of certain of its employees, 1 week prior to the implementation of the changes. The General Counsel and the Charging Party contest the propriety of the withdrawal of recognition and allege that, even if the withdrawal of recognition was proper, Respondent's aforementioned unilateral changes unlawfully discriminated against those former economic strikers who had not as yet been recalled to work. The amended consolidated complaint next alleges that Respondent failed and refused to recall certain former economic strikers, who had made unconditional offers to return, to work in violation of Section 8(a)(1), (3), and (5) of the Act.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

1. Background

Respondent, whose headquarters office is located in Springfield, Oregon, operates a plant/mill facility in Medford, Oregon, at which it manufactures hardwood plywood, particleboard, and other wood products. Joseph Gonyea is the general manager of Respondent and is responsible for its overall operations; Alex Austin is the resident manager of the Medford facility and responsible for its day-to-day operations; and Gary Johnson is the employee relations director for Respondent. The record establishes that the Union and Respondent have had a collective-bargaining relationship since 1966, with the former as the collective-bargaining representative of all of Respondent's employees; excluding its office clerical and professional employees, guards, and statutory supervisors, and that the most recent collective-bargaining agreement between the parties expired by its terms on May 31, 1983. Negotiations for a successor contract were unsuccessful and, on August 19, 1983, the employees who were represented by the Union engaged in a concerted work stoppage and strike. The strike, which was economically motivated, and the accompanying picketing continued until September 28, 1983, at which time the Union, on behalf of the striking employees, in writing, made an unconditional offer to return to work. The aforementioned bargaining continued during and after the strike, with the Union indicating its acceptance of an outstanding final offer on October 11, 1983. Whether the parties had in fact reached an enforceable agreement and whether Respondent was obligated to execute and abide by it and certain other acts and conduct of Respondent during and subsequent to the strike were the subjects of an original and amended unfair labor practice charge in Case 36-CA-4576, of a complaint issued by the Regional Director for Region 19, of a hearing before Administrative Law Judge Russell L. Stevens, and of a Decision and Order, reported at 277 NLRB 769, issued by the Board on November 26, 1985.

Reversing portions of and affirming other portions of the judge's decision, the Board found that Respondent engaged in conduct violative of Section 8(a)(1) and (5) of the Act by failing and refusing to execute and abide by a 3-year contract, negotiated and agreed on by the Union, and by implementing work rule changes and new employee dental and vision plans, covering bargaining unit employees, without notice to, or bargaining with, the Union, and of Section 8(a)(1) of the Act by conditioning reinstatement of economic strikers on their resignation from the Union.

The record further establishes that the normal complement at Respondent's Medford facility totals approximately 160 bargaining unit employees but that, at the commencement of the aforementioned strike, approximately 54 production workers were on layoff status due to the then recessionary state of the wood products industry. Notwithstanding the work stoppage, Respondent endeavored to maintain production at the Medford plant by hiring strike replacements and by soliciting strikers and those on layoff status to return to work. Thus, on September 21, 1983, Respondent sent the following letter, General Counsel's Exhibit 5, signed by Alex Austin, to all such employees:

Dear Timber Products Employees,

You are now aware that talks between Timber Products Co. and [the Union] regarding contract renewal are at an impasse. We made an attempt to reconcile our differences but unfortunately we failed.

We are not in a position we must make other plans for plant operation. We are taking applications for and will be hiring permanent replacements. We suggest you contact us about returning, before a replacement is hired.

An early decision on your part is in the best interests of all concerned.

Although it is unclear whether such was prior to or subsequent to the sending of the above letter, 57 striking employees abandoned the strike and returned to work and two laid-off employees also returned to work. Of these individuals, 52 former strikers resigned their membership in the Union and one of those returning from layoff did likewise. It is also unclear whether each of these resignations was as a result of Respondent's unlawful demands, attributed to Gary Johnson and a supervisor, Doug Knokey, that returning employees resign from the Union before being permitted to work. Finally with regard to those employees laid off prior to the commencement of the strike, Dennis Dawson, the Union's business agent and financial secretary, testified that "over 20" of the individuals engaged in some picketing during the period of the strike; however, he failed to identify any of them to Respondent subsequent to the strike.

As to the unilateral changes in bargaining unit employees' terms and conditions of employment, found by the Board to have been violative of Section 8(a)(1) and (5) of the Act, the record establishes that these occurred shortly before and immediately after the end of the strike and that they entailed changing a work rule so that bargain-

ing unit employees who worked a 4-day week no longer were permitted to bump less senior employees for a fifth day of work, implementing new dental and division insurance coverage for the employees, and changing another work rule so that employees whose machines were in need of repair would have to remain at work performing other tasks rather than having the option of either doing other work or going home. Respondent admitted to the initial two violations and failed to deny the record evidence concerning the latter. However, during rebuttal herein, Gary Johnson testified, without contradiction, that, prior to the hearing in Case 36-CA-4576, the Union and Respondent bargained and reached agreement over a new employees' dental insurance plan, which was implemented and remains in effect. Johnson further testified that, prior to the hearing, the new bumping rule was rescinded and that it was not reimplemented until institution of the new employee handbook in September 1984.

2. The withdrawal of recognition

There is no dispute herein that, in an apparent effort to settle the unfair labor practice allegations involved in Administrative Law Judge Stevens' May 3, 1984¹ decision, Respondent submitted "a complete and final agreement," on a nonnegotiable, take-it-or-leave-it basis, to the Union on August 1.² Thereafter,³ on August 7, representatives of the Union met with officials of Respondent at the latter's Medford offices, which are located adjacent to the plant facility. According to the uncontroverted testimony of Union President Hicks, the meeting was "informative," with the Union desiring clarification of several provisions. Several such articles, including union security and seniority, were unacceptable to the Union. Hicks explained the Union's objections to Respondent's representatives, and Gonyea agreed to alter the seniority provision, permitting workers who were on layoff status to retain their company seniority for 1 year. Hicks thereupon said the entire contract proposal would be submitted to the membership for ratification or rejection.

As promised, the Union scheduled ratification meetings for 1 and 7 p.m. on August 9. Michael Hicks testified that he was approached by several employees, who were not members of the Union, in the morning at the plant and that their common concern was that non-members were not going to be permitted to participate in the ratification vote. Of the option that they should be

¹ Unless otherwise stated, from this point in my decision until the conclusion, all dates will be in calendar year 1984.

² The submission of this contract proposal by the Respondent had, as its genesis, a question to Dawson by Joseph Gonyea at a July 12 grievance settlement meeting as to whether the Union was ready to resume contract negotiations. Fearing that Gonyea's question presaged future unilateral changes in employee working conditions, the Union's executive board instructed Michael Hicks, the president of the Union and an employee of Respondent, to explain to Gonyea that the Union was not refusing to negotiate but felt it necessary to maintain its legal position that the parties had previously reached a complete agreement on a new contract. Thereafter, Hicks, who had been recalled by Respondent to work, met twice with Gonyea and, after listening to Hicks' explanation of the Union's procedural problem, the latter proposed what resulted in the submission of Respondent's August 1 contract offer.

³ The Union had been given a deadline of 5 p.m. on August 10 to accept the contract proposal—otherwise, "it will be deemed withdrawn."

allowed to vote, Hicks told these individuals that he was obligated to represent all employees, and "I wouldn't be doing my job . . . if I didn't allow them to vote." In any event, the meetings occurred at the scheduled times on August 9. Both Hicks and Dawson attended the afternoon session.⁴ Approximately 35 employees attended, and it began with an extensive discussion of the merits of the contract proposal. After this, a motion was raised to permit only members in good standing of the Union to vote on ratification. A majority voted in favor of the motion; however, according to Hicks, as a result "there was mass confusion." Discussion ensued over the need for an extension of time so that the membership could properly consider the proposed contract, and a motion was raised to amend the motion that had been passed earlier in the session, "to not have any vote at all until we got an extension of time from the company." While this motion was also passed by majority vote, the testimony of Dawson makes it clear that the exact meaning of this latter vote was not understood by those in attendance.⁵ According to him, the identical motions were proposed and passed by majority vote at the evening session.

Whatever may have been the intended result of the second motion at each ratification session that day, what was apparently reported to those nonmember employees at the plant who failed to attend either meeting was that nonmembers would not be allowed to participate in the contract ratification process. According to one witness, "word got around pretty fast." Union President Hicks believed such to have been the outcome of the afternoon meeting⁶ as, on leaving it, Hicks returned to the plant and informed Employee Relations Director Gary Johnson that those at the meeting had voted not to permit anyone who was not a member in good standing to vote on ratification and to seek an extension of time. Perhaps as a result of what transpired at the two union meetings, later that day, and on August 10 Hicks received approximately 24 or 25 marked pieces of paper from employees, with the slips of paper containing the employees' names and their votes on either accepting or rejecting Respondent's contract proposal. Although unclear, it appears that these were the ratification votes of employees who were not members of the Union. Thus, Hicks testified that he had been given these ballots as "people had come and asked me about the voting; I had basically stated that I felt I had to represent everybody and that I would not in good conscience refuse a vote." Further exacerbating the fears and concerns of the nonmember employees was the posting of a notice, signed by Gary Johnson, on a plant bulletin board on August 10. The document, General Counsel's Exhibit 14, reads:

We have been advised by Local 3-6 that they will only allow members in good standing to vote on the company's offer.

We assume you know that if the offer is not accepted by August 10 . . . it will be withdrawn. . . .

We regret that the union, which is obligated by law to represent all of you, has chosen to deprive most of you of any say in your own future.

Finally, adding a note of confusion to this situation was a portion of a letter, dated August 10, from Dennis Dawson to Alex Austin in which the former, following the apparent dictates of the second motion that had been passed at the previous day's meetings, informed the resident manager of the plant that the Union was not able to either accept or reject Respondent's contract proposal due to insufficient time for proper consideration and for any decision "whether to permit non-member employees to vote on the agreement." Dawson closed with the following statement: "We . . . are willing to consider the possibility of permitting [nonmember employees] to vote on any proposed agreement." A copy of the letter, as with the Johnson letter, was posted by Dawson at the plant but not until the following Monday, August 13.

On September 6, Joseph Gonyea wrote a letter to Dawson, informing the Union's financial secretary that Respondent "no longer recognizes" the Union as the collective-bargaining representative of its employees and stating as a basis for the withdrawal of recognition "a good-faith doubt that Local 3-6 represent[ed] a majority of its employees." During the time period from August 13 through September 6, despite requests from the Union for an additional 14 days during which to consider the proposed contract, Respondent adhered to the established terms of its August 1 offer and, by letter dated August 17, withdrew the contract proposal according to its terms. Meanwhile, no less than four different employee petitions were being circulated at the plant among the bargaining unit workers. One was directed to Union President Hicks, supporting him to represent those who executed it. Another, according to employee Clyde Goble, "had something to do about . . . wanting to be able to vote on the proposal." A third petition, testified employee Mario Gonzalez, concerned "dissatisfaction with the doings of the Union." The fourth petition, the ultimate and sole source for Respondent's asserted "good-faith doubt," was distributed by employee Bill Chase. The petition, Respondent's Exhibit 5, actually consists of four identical sheets of paper each with a printed heading as follows:

To: Joe Gonyea, General Manager of Timer Products Co.

Re: IWA 3-6; Labor contract offer

We, the undersigned are Timber Products employees currently working in the Medford mill and would like to express our dissatisfaction and disenchantment over the so-called "bargaining rights" of the minority of Timber Products employees belonging to [the Union]. We feel that at no time in the

⁴ I have utilized the uncontroverted and corroborative testimony of Dawson and Hicks about what transpired at the ratification meetings.

⁵ President Hicks testified that he left the ratification meeting prior to the vote on the second motion.

⁶ Hicks apparently changed his mind on this point, telling the executive board of the Union that he interpreted the second votes at the meetings as having nullified the initial votes. He admitted, however, not telling employees at the plant of his new opinion.

past eighteen months has this union represented us in a responsible manner and now, in the most recent contract offer, has totally denied us, the majority of employees, any voice whatsoever. We must therefore insist on a majority rule basis; that [the Union] not be considered our bargaining agent.

Analysis of the petition reveals that it contains 75 signatures and that approximately 70 of these were obtained on August 14. With regard to the purpose of the petition, James Baize, another employee, testified that Chase solicited his signature on three occasions, saying each time that "he wanted me to sign it . . . because he figured that . . . the people who signed it should have the right to vote for the contract." Whatever the petition's purpose, on September 4, Chase handed the four-page document, with signatures and dates below the printed heading on each page, to Gary Johnson. According to the latter, who denied any involvement in the petition process, "I was just out there in the shop where he worked, and he approached me and said . . . 'I have something I would like you to deliver to Mr. Gonyea.'" Thereupon, Johnson took the four-page petition to the plant office, where Gonyea and Austin were working, and presented the document to the former. Gonyea testified that he examined the petition and, in his own words, immediately formulated a "reasonable doubt as to whether [the Union] represented the majority of our employees." Gonyea thereupon gave the petition to Austin for the latter's examination as he was "much more familiar with all the employees [sic] names than I am." Next, the two company officials counted the signatures, estimated that these represented more than 50 percent of employees on the payroll, and thereupon telephoned Respondent's attorney. Later that day, Austin gave a copy of the petition to Johnson; he subsequently checked the names represented by the signatures against Respondent's payroll list as of September 6.

The parties stipulated that, as of September 4, there were 136 employees on Respondent's payroll; that there were 75 employee signatures on the Chase petition; that, as of September 4, there were 33 unrecalled, former strikers; that, considering just the employees actually working, the 75 signatures comprise 55 percent of the bargaining unit complement; and that, if unrecalled strikers are included in the employee complement, the signatures comprise 44 percent of the total. Regarding how Respondent calculated the percentages, which are the basis of the above-described September 6 withdrawal of recognition letter, Johnson testified, "I don't recall how we figured out the majority; all I did was provide the numbers." Neither Gonyea nor Austin testified on this point. Bearing on Respondent's asserted good-faith doubt is the matter of its business expansion plans in the fall of 1984. In this regard, Michael Hicks testified that Alex Austin approached him in the plant about August 17 and commented that "we should have signed the proposal because they wanted to bring more people back to work." That such was, in fact, Respondent's intent is manifest from the testimony of Joseph Gonyea who, while testifying that the wood products market was "terrible" from the fall of 1983 until the fall of 1984, stated that Re-

spondent began increasing its hardwood plywood production in October 1984 as "part of an overall plan that had actually started in the spring . . . in an effort, over a period of time to expand our customer base, and get into a broader range of hardwood plywood . . . to become a dominant force in the hardwood plywood market." Indeed, Respondent's expansion proceeded at such a rapid pace that, by February 1985, all former strikers had been recalled to work. However, none of those on layoff status at the time of strike and who did not work during the strike has been recalled for work by Respondent.

3. Respondent's unilateral changes after September 6, 1984

Besides withdrawing recognition from the Union as the bargaining representative of its employees on September 6, Respondent also severely restricted Dennis Dawson's freedom of access to the plant on that date. Thus, the expired collective-bargaining agreement provided that union officials, who were not employees of Respondent, could arrange to enter the plant by contacting the industrial relations manager and by obtaining a pass. Dawson, who apparently is a full-time employee of the Union, testified that prior to the 1983 strike, in actual practice, he enjoyed "pretty free access, anytime I wanted to enter the plant." He asserted that there were no restrictions and that he could enter without challenge. Subsequent to the strike, according to Dawson, "I was allowed access to the plant by stopping at the company office and signing . . . an admittance slip," which would be given to him by a receptionist. Dawson, in turn, would show this to a security guard. The union official further stated that at no time was he required to seek the permission of either Alex Austin or Gary Johnson before entering the facility. Such free access to the plant was changed by Joseph Gonyea in a second letter to Dawson on September 6 where he stated "since [the Union] no longer represents the employees of Timber Products Co., your only access to company property will be by pass issued by Alex Austin or Gary Johnson." According to Dawson, he followed Gonyea's new instructions on September 7; however, Austin refused to permit him to enter the plant.

There is no dispute that, approximately 1 week after withdrawing recognition, about September 13, Respondent implemented a new employee handbook, which concededly changed certain of the then existing terms and conditions of employment of the bargaining unit employees. There is also no dispute that the handbook and the new employment policies contained therein were unilaterally instituted by Respondent without notice to or bargaining with the Union. Specifically as to the implemented changes,⁷ the handbook, General Counsel's Exhibit

⁷ Inasmuch as Respondent concedes that the handbook was implemented unilaterally and that such was unlawful if the withdrawal of recognition is deemed not proper, I have not attempted to exhaustively analyze each and every change in past practice established by the handbook. Those I have set forth were most obvious to me and in accord with those highlighted by the parties.

15, sets forth a \$7.28-per-hour base rate job wage rate, an altered grievance procedure (one that provides no representation for employees) from that established under the expired collective-bargaining agreement, a new "solicitation-distribution rule," and a different pension plan. Further, the handbook reserves bulletin boards for the exclusive use of Respondent; under the expired contract, the Union was permitted to erect and to maintain bulletin boards. The handbook established mandatory overtime for maintenance workers; under the expired union contract and thereafter, employees were permitted to refuse overtime without fear of reprisal. Moreover, the new handbook restricted the primacy of seniority by adding, as an additional limitation to its effect, "the needs of the company." Previously, the only expressed limitation concerned employees' ability to satisfactorily perform work. Also, curtailments were required to be accomplished consistent with the principle of seniority; under the handbook, such may be accomplished "without regard to seniority." Finally, as to seniority under the existing conditions of employment, nothing was expressed about how long laid-off employees retained their seniority rights; the handbook limited retention of such to a period of "one year only." As to the vacation eligibility rules, the handbook altered the existing definition of "continuous employment" to "1200 compensable hours during a vacation base year" from "employment . . . uninterrupted by voluntary termination . . . retirement or discharge." Regarding the designation of "floating holidays," the handbook reserved to Respondent the choice of days; whereas such had previously been the subject of bargaining.

With regard to the effect of the implementation of the employee handbook on those former strikers not yet recalled, the impact of its altered terms and conditions of employment was most severe. Thus, the seniority provision states that "an employee rehired after a break in service of more than one year shall be treated as a new employee." In practice, as the record reveals, 21 former strikers who were recalled after September 13 and who had performed no work for Respondent since the conclusion of the strike⁸ were assigned, as seniority dates, the dates they were recalled to permanent positions. Thus, Gerald Clouse, who had been employed by Respondent for 9 years prior to the strike, was not recalled to a permanent position until November 5 and was given that date as his new seniority date. Likewise, Michael Duro, who was a former striker and who had worked for Respondent for 8 years prior to the strike, was not recalled to a permanent position until January 14, 1985, and was given that date as a seniority date. Further, all former strikers who were recalled to permanent jobs after implementation of the employee handbook were given the new \$7.28 hourly wage⁹ and were not entitled

to shift differential pay. Also, several former strikers were offered temporary jobs after implementation of the handbook and were treated as new hires while doing such work. According to one, Gerald Clouse, who accepted a temporary laborer job, Gary Johnson told him on his first day back at work that "we had no bidding rights, no seniority rights, and no gain of seniority as a temporary worker." Also, he was not entitled to health insurance benefits and had no bumping or seniority privileges. Another former striker, Terry Ragan, testified that Johnson told him that, as a temporary worker, he would have no seniority, vacation time, holiday pay, or medical benefits and no bidding rights. Gary Johnson initially testified that job bids from temporary workers "were not disallowed" but later admitted that "we ignore them" and that temporary employees have no seniority rights to exercise in the bidding procedure.

4. Respondent's alleged failure to recall former economic strikers

a. *The White City spreader machine crew*

The record establishes that essential to the production of hardwood plywood is the operation of what is called the spreader machine. Basically, a panel of hardwood plywood consists of a core, comprised of layers of wood panels that are glued together to a specified thickness (the number of core panels varies with the desired thickness of the plywood), and two "skins" of veneer overlay material (termed "faces" and "backs"). The two veneer skins and the wood panels that constitute the core are initially glued together and then pressed to form a piece of hardwood plywood. The glue application procedure involves operation of the spreader machine into which the wood core panels are fed and glue applied and spread, covering both surfaces of the panel. The record further establishes that four-man crews are utilized to operate the machine to work with the core panels. One of them, the "core feeder," feeds the core panels into the machine and the other, the "core layer," catches the panels and stacks core panels to attain the desired thickness (one layer of core panel is necessary for a one-half-inch thick panel of plywood and two panels constitute the core of three-fourths-inch thick plywood). The other two men are responsible for laying the face and back wood veneer skins against the glue laden core panels. All witnesses agreed that teamwork is essential among the new members. According to David Twedell, a foreman in the lay up and finish department in the plant's plywood production are, "Those four men have to work together like a machine If one is out of sync, the whole crew is out of sync [sic]. It is very much a cooperative effort." Twedell explained that speed is of the essence as stacks of specified amounts of glued-together pieces of plywood must be placed in the hot presses and as the applied glue hardens rapidly.¹⁰ The difficulty in

⁸ These are Jack Dailey, Daniel Deshane, Jimmie Henderson, David Paton, Bruce Robertson, Ralph Southam, Jerry Wright, Darrell Campbell, Terry Johnson, Michael Olsen, James Risher, Donna Williams, George Williams, Gerald Clouse, Richard Guches, Earnil Johnson, Terry Ragan, Michael Duro, Jose Luna, Dionisio Banuelos, and Stephen Thayer.

⁹ The wage rate applied to anyone hired after August 19, 1983, the day on which the strike began, and to any employee recalled after a more than 1-year break in service.

¹⁰ The glue must not harden prior to the glued-together panels being placed in the hot presses. Depending on the capacity of the press, stacks of either 27 or 30 pieces are placed in a press.

working quickly is that the core feeder and the core layer must keep an accurate count of the panels necessary to constitute a core and must make certain that the wood panels are not damaged during the process.¹¹ Finally, spreader crews are awarded bonuses depending on their daily output. The bonus is computed once a crew lays a minimum of 60,000 feet of core wood a day. Alex Austin testified that the maximum spreader machine daily production is approximately 110,000 feet of core wood and that the average is approximately 85,000 feet. Substantial bonus money is lost by the crewmembers and revenue is lost by Respondent if a spreader machine crew lays only the minimum amount of plywood core each day.

The record discloses that, pursuant to its plan to expand production in the fall of 1984, Respondent, in October, formed and began utilizing two additional spreader machine crews to operate the machines during the swing shift. According to Gary Johnson, the decision to form these crews was made in August by the plywood superintendent, John Rosendahl. Johnson testified that a decision was made to start one crew by October 8 and that there was "an early posting" of bids in August "to see how many spreader people were available that we had working for us." Eventually, the four spreader crew jobs were given to employees Dave Paxson, Bruce Robertson, Jerry Wright, and Jack Dailey; Johnson stated that each was a former striker who had not, as yet, been recalled for work.¹² However, despite the posting of bids, Johnson was unable to definitely state whether any of the four former strikers had submitted bids or whether they had been selected for the jobs off the recall list. In any event, another decision was made to start a second swing shift spreader crew on October 22. As before, bids were posted; however, Rosendahl deemed all those who bid, not qualified.¹³ Afterward, according to Johnson, Rosendahl, Austin, and he discussed the bidding "because there was a big concern of not having qualified people," and, as a result, "I made a list of the people who were either on layoff or were off and didn't have an opportunity to see the bid, to see that we weren't overlooking somebody, because they were saying there weren't any qualified bidders and so that would mean we would have to look to the outside." In compiling this list of employees, the first page of Re-

spondent's Exhibit 6(b), Johnson assertedly wrote down the names of *all* individuals, including unrecalled strikers and others, who were either not working or working on a temporary basis for Respondent as of October 15 and 16,¹⁴ noted if the listed individual had no prior experience on the spreader machine,¹⁵ and, if experienced, set forth the dates on which he worked on the machine.¹⁶ Johnson further testified that, after compiling the list, "I went to John Rosendahl to say that these people have had experience, and John said, no, they are not experienced . . . and I let him make the decision. I just wanted to make sure if he had considered all the people with experience at this time." He further testified that Rosendahl's decision was not instantaneous and that "I think he may have checked with somebody else." Asked how much time elapsed before Rosendahl told him that none of those listed was qualified, Johnson replied, "A short period of time, either that day or the next."

There is no dispute that Rosendahl, with input from Foreman Twedell, made the decisions that none of those on Johnson's list was qualified to be a member of the about-to-be-formed spreader crew. The position of the General Counsel is that at least four former strikers (Tim Smith, Terry Ragan, Gerald Clouse, and Terry Johnson)¹⁷ were both available and experienced and should have been utilized by Respondent to make up the new spreader machine crew, which was to commence working on October 22. The crux of the testimony of Rosendahl is that he considered the above-named employees and decided that they were not qualified to constitute a spreader crew as "they are not qualified people to put plys of veneer together to make plywood" based on prior problems with mislays and rejects.¹⁸ Initially, with

¹⁴ The name of Terry Ragan, who was an unrecalled former economic striker as of October 15, does not appear on this list.

This list did not include anyone who was on layoff status at the time of the strike. Said Gary Johnson, "We didn't consider them employees of Timber Products" in September when the employee handbook was implemented.

¹⁵ Johnson characterized an individual as not experienced if his personnel file showed that "he had never received a spreader job and been awarded it." He asserted the personnel records did not contain information that an employee worked on the spreader machine "for a day or something." According to the witness, he "wouldn't consider anybody [who worked sporadically on the spreader] qualified to be spreader."

Terry Ragan testified that, prior to the strike, he had experience on the machine but such was "limited to two or three weeks of fill-in a day at a time." Also, on five or six occasions, on Fridays, he was able to bump onto a spreader machine crew. Regarding that job, Ragan admitted, "You do need a minimum amount of experience, and you do need a certain skill level." He added, however, that he was qualified inasmuch as "they don't let you bump onto another job unless you can fulfill their basic needs." Ragan further testified that, while he had 7 years of prior work experience for Respondent, his 2 or 3 weeks total experience on the spreader machine was only during 1982 and 1983 and then not on consecutive days. Finally, Ragan stated that while bidding for the job on occasion, he was never awarded that work.

¹⁶ Tim Smith, whose name was on the list and who had 2 months' experience on a spreader crew in 1981, admitted that he "left" the job at the time as he was not satisfied with the job's earning potential and as "I didn't like swing shift."

¹⁷ The names of Clouse and Johnson appear on the list that was prepared by Gary Johnson. Further, as will be discussed below, each is noted as having worked on the spreader machine.

¹⁸ Rosendahl contradicted Gary Johnson about when this decision was reached. Thus, during cross-examination, Rosendahl asserted that he decided that neither Ragan, Smith, Clouse, nor Terry Johnson was qualified on the spreader at the time the initial new spreader crew was started.

¹¹ Mistakes in counting the panels constitute the core of a piece of plywood result in pieces of an incorrect thickness. Such mistakes are known as "mislays" and apparently are the most common of spreader machine mistakes. Pieces of plywood that are damaged to any extent are known as "rejects." If of an improper thickness or damaged to any extent, the market value of the plywood decreases by as much as 15 percent.

¹² This testimony is corroborated by C.P. Exhs. 4 and 5, which establish that Paxson, Wright, Robertson, and Jack Dailey were former strikers and that each was given an October 8, 1984 seniority date.

¹³ Among the bidders was former striker Timothy Smith. The record discloses that he had been recalled by Respondent shortly after the cessation of the strike for 3 weeks and that he had again been called back for work in late September or early October as a forklift driver. Prior to being recalled on the latter occasion, Smith testified, he became aware that a spreader crew would be established on the swing shift. After returning to work, having performed such work for a period of 2 months in March and April 1981, Smith submitted bids but was rejected. He further testified that he spoke to his foreman and was told "there wasn't any qualified people."

regard to Ragan, as his name did not even appear on the employee relations director's list, it is questionable that Rosendahl even considered him for a position on the spreader machine crew. In any event, Rosendahl initially testified that the former was unqualified for the job as he had not "worked on there that long." Later, asserting that he personally had observed Ragan's work on the spreader machine, Rosendahl revised his testimony, stating that the former "just didn't understand what the job pertained to" and "he just didn't know what went where." Concerning Tim Smith, Rosendahl likewise averred that the employee had not "worked there that long" and that Smith had no prior experience on a spreader machine before working for Respondent.¹⁹ Concerning Gerald Clouse, who worked on a spreader machine crew for Respondent from November 1978 until March 1979 and for a 9-month period, January through September 1981,²⁰ Rosendahl, after assertedly consulting with Day-Shift Foreman Twedell, determined that Clouse was not qualified to be recalled for the spreader machine crew job. Rosendahl claimed that his decision was influenced by notations of three verbal warnings (R. Exhs. 8, 9, and 10) apparently given to Clouse regarding his work on the spreader machine.²¹ With regard to the alleged warnings, the superintendent admitted that each is in the handwriting of the swing shift foreman, Rod Graham,²² that he relied on what Graham reported to him concerning the underlying facts, and that he personally never issued a warning to Clouse.²³ However, Rosendahl also testified that he was, in fact, present when Clouse and his partner caused some of the mislays, reported in Respondent's Exhibit 8— "they were making plywood down there . . . normally, all the people try to count how many layers they have . . . and this wasn't being done at this time, and I stopped them and made them tear the panel apart . . . and start it again . . . and they laid another one, and I stopped them and made them tear it apart." Clouse specifically denied ever receiving any such warning from Rosendahl and stated

that the latter would direct only criticisms to Graham "and then Rod would come over and tell us."²⁴ Regarding Twedell's input vis-a-vis Clouse, Rosendahl stated that the foreman believed Clouse to be not qualified. Twedell testified that he was the day-shift foreman in 1981; that he regularly observed Clouse's work on the spreader machine on the swing shift as "every day I stayed over at least an hour into the second shift"; and that he evaluated Clouse's work as "not good." Twedell explained that Clouse's work resulted in numerous mislays caused by his inability to properly count the plywood core layers and said of Clouse and his partner, "[N]either one of them were confident enough in themselves and the mistakes were made very quickly at the beginning of the shift, that I observed Mr. Clouse."²⁵ Finally, with regard to Terry Johnson, who worked on a spreader machine crew during swing shift for 30 days in 1981 (after which he "went back to my original job by my choice. I was not denied the job.") and thereafter on a fill-in basis no more than once a month, Rosendahl, with input from Twedell, concluded that Johnson was not qualified to work on a spreader machine crew. Asked the basis for his decision, Rosendahl cited as factors that Johnson had no prior spreader machine experience before being employed by Respondent and that his experience with Respondent was "limited to relief . . . if somebody was off." Twedell corroborated Rosendahl that the latter asked for his opinion of both Johnson and Clouse as spreader machine crewmembers prior to the hiring of anyone for a second spreader machine crew in October 1984—"and I at that time, told him, in my opinion, they were not qualified as spreadmen for hardwood plywood."

In assessing the qualifications of Ragan, Smith, Clouse, and Terry Johnson to be assigned to the spreader machine, Rosendahl emphasized considering them as a crew and how they would function together, rather than individually, on the machine. In this regard, he testified that he would not have utilized one, two, or three and combined them with new hires to form a spreader crew as "four people have to work together . . . and you can't have three going on [sic] way and one going the other. . . . All four of them have to all be in unison." Rosendahl added, "I remembered when they were working together on the spreader" in 1981 "their footage was low. . . . Their reject factor was [high] . . . and their workmanship was far from being up to par." Regarding the functioning of these individuals on a crew during 1981,²⁶ Foreman Twedell testified that he observed Smith and Johnson working on one crew and working with Clouse on another spreader crew, that the crews appeared to be "unorganized" in their work, and that he always had to "doublecheck their wood" for purposes of

¹⁹ The importance of this factor cited by Rosendahl must be viewed in light of the comment by Gary Johnson in response to being asked whether prior experience on the spreader machine is not a prerequisite to being given such a job by Respondent—"Right, we've trained a lot of them." He further stated that employees are given the job by supervisors "if it can be seen that they can do it."

²⁰ Clouse worked on a spreader crew during the swing shift and left that job as "they shut down a swing shift spreader crew."

²¹ R. Exh. 8 is a list of seven employees, including Clouse. Beside each name is the number of mislays caused by each during the time period July 6 to August 4, 1981. Clouse is listed as causing 20 mislays, an amount more than twice as much as caused by the remaining 6 employees. R. Exh. 9 consists of notations of four separate discussions (May 21 and 27 and August 3 and 5, 1981) concerning mislays. R. Exh. 10 is a warning, dated January 26, 1978, given to Clouse for "failure to perform job—lay up and absenteeism" and is signed by Rod Graham, the swing-shift foreman. Oddly, the latter is dated *before* Clouse was first assigned to the spreader machine.

²² Rosendahl asserted that some of the notations on R. Exh. 8 are his.

²³ Testifying during the General Counsel's case-in-chief, Clouse admitted that, in 1981, "I believe at one time [the entire crew was] warned about our mislays. . . . There are two men that are accountable for counting the sheets, and there were two of us that were warned." During rebuttal, Clouse said that, in 1981, Graham issued just one verbal warning to him regarding the fact that he and his partner had experienced five or six mislays in 1 hour.

Clouse denied any knowledge of R. Exh. 10.

²⁴ Graham was not called as a witness by Respondent, and counsel offered no explanation for his failure to testify.

²⁵ Twedell conceded that Clouse's work was not so bad as to require his foreman, Rod Graham, to remove him from the spreader machine crew.

²⁶ Clouse, Smith, and Terry Johnson worked on the spreader machine at the same time, March and April 1981; however, Smith, while admitting working with Clouse, denied working with Johnson as members of a spreader crew.

quality control. Further, when the three were together on one crew, its output "peaked after about three weeks" and "it went downhill because that's when . . . we started getting more and more complaints on their work. As their production peaked, their quality decreased." According to Twedell, after that crew complained about the quality of the wood they were processing and, as a result, were given a better grade, "the reject percentage was three times higher than any other crew we employed at that time."

There is no dispute that, rather than utilizing any then-working employees, not-as-yet recalled former strikers, or employees on layoff status, Respondent hired four individuals, who had been laid off from its White City, Oregon plant where they had made up a spreader machine crew, to make up the other newly established swing spreader machine crew. The four individuals were hired by John Rosendahl who testified that, after concluding that none of Respondent's current employees was qualified for the job, he was informed by a day-shift spreader machine operator that the four White City employees had recently been laid off and were seeking work. Thereafter, on speaking to them, the four were hired and began working about October 22. In this regard, Rosendahl testified that it is "a common industry practice" to hire spreader machine crews on such a basis rather than individually.²⁷

b. The failure to recall Michael Duro

The record reveals that, prior to the August 19, 1983 strike, Michael Duro had been employed by Respondent for 8 years during which time he worked on the dryers, drove heavy equipment, and performed laborer jobs. He participated in the strike and made an unconditional offer to return at its conclusion, but had no contact with Respondent until November 1984. Although the sequence of events and, indeed, what actually occurred was, to put it charitably, confused by Duro's poor recollection of them, it appears that, aware that Respondent was in the midst of expanding production, he telephoned the plant in order to ascertain his position on the recall list and spoke to Gary Johnson. The latter told Duro that a temporary job was available but suggested that he not quit his present job, which was a full-time position. Approximately a week later, Duro again telephoned Johnson and said that he would take any type of a job with Respondent. Johnson replied that there might be a temporary job available and told Duro to call on the following Monday "to see" if such a position was open.

Pursuant to Johnson's instructions, Duro telephoned him the next Monday; Johnson said that he had a temporary job for him and Duro said that he would take it. Based on what Johnson told him, Duro gave notice to his employer of his intention to quit. However, a short time later, Johnson called Duro and told him that the temporary job no longer existed "because Art Bogart got released unexpectedly and returned to work." During

cross-examination, Duro admitted understanding Johnson to mean that the temporary job, which he was to have been given, was filled by the individual who normally had that position as he unexpectedly returned to work, having been released by his doctor to do so. Finally, after having his memory refreshed by counsel for the General Counsel, Duro recalled that Johnson offered him a temporary position "for a guy that was off on medical leave." The parties stipulated that Duro was recalled and returned to work for Respondent on January 14, 1985.

Gary Johnson testified that Duro did call him and did say he would take a temporary job, that he told Duro one such position was available, that Duro said he would take it, and that "the next day I had to call him back and tell him the temporary was no longer available, because Arthur Bogart . . . returned from an illness . . . sooner than I had anticipated, which filled this temporary position." During cross-examination, Johnson conceded that he might not have told Duro the individual's name but asserted he did say that "somebody had returned unexpectedly from an illness." He further conceded that Duro would not have been given Bogart's job as a jitney driver but one created after "you transfer everybody around." He added that Duro would have been placed in a "hole," created after another worker bumped up.

c. The refusal to reinstate Jose Acosta

The record established that, prior to the August 19, 1983 strike, Jose Acosta had been employed by Respondent for 10 years, that he performed all type of jobs, and that, at the commencement of the strike, he was a "drive feeder" on the day shift. He participated in the concerted work stoppage, made an unconditional offer to return at its conclusion, and informed Respondent that, when recalled, he would be willing to accept "anything"—any type of job. Subsequently, Acosta had no contact with Respondent until September 27, 1984. At that time, Gary Johnson called and offered him a temporary job in the particle board department for 1 week on the day shift. Notwithstanding that it was not a job he had previously performed, Acosta accepted.

He returned to Respondent's facility and worked at the temporary job. On the next to the last day for that job, Johnson came over to him at his work station and offered him another temporary job, cleaning the tanks on the glue line. The job would last for 1 week and would be on the graveyard shift. Johnson further explained that the job would require climbing, lifting, and bending and involved washing materials with water. The next day, Acosta, who 8 months before had hip surgery and had been advised by his physician to avoid the type of conditions attendant to the proffered job, telephoned Johnson and said, "I'm sorry, I cannot do that kind of a job, due to my health." Johnson replied, "Well, I don't believe you."

Acosta completed his last day of work, including working on the graveyard shift. The next morning, Johnson called him at home and said, "If anybody refuses any work, we'll terminate him." Acosta replied that physically he could not do the required work. Johnson respond-

²⁷ Clouse testified, without contradiction, that never, prior to the strike, had Respondent ever brought in a crew to operate the spreader machines and that crews had always been formed from its existing employee complement.

ed that he did not believe Acosta, saying, "You are going to have to be terminated." A few days later, Acosta was given a work restriction note by his doctor, which note stated that Acosta could perform no work requiring regular stair climbing, lifting more than 20 pounds, and work on the graveyard shift. Despite submitting this to Respondent's personnel office, another job offer has not been tendered to him.

Johnson did not dispute Acosta's version of what occurred. However, when asked if he said to Acosta that he did not believe him, Johnson said, "I don't recall using those exact words. He told me he had a tumor on his leg and had had surgery in December, and he couldn't take the position because he couldn't get enough rest on graveyard." He added, "[A]t the time I didn't believe that the physical problem was the problem. It was that he couldn't . . . get enough sleep working graveyard." Johnson conceded that he did not tell this to Acosta.

B. Analysis

1. The withdrawal of recognition

Notwithstanding the rather labyrinthine and tortuous analysis espoused by counsel for Respondent in his posthearing brief, the longstanding Board law in this area is straightforward and easily expressed. That is, "[T]he existence of a contract gives rise to a presumption that the Union was the majority representative at the time the contract was executed and through the life of the contract." *Petroleum Contractors*, 250 NLRB 604, 607 (1980); *Shamrock Dairy*, 119 NLRB 989 (1957), and 124 NLRB 494 (1959), *enfd.* 280 F.2d 665 (D.C. Cir. 1960), *cert. denied* 364 U.S. 892 (1960). Following the expiration of the collective-bargaining agreement, this presumption continues, though rebuttable, and the burden of rebutting it rests on the party who would do so. *Petroleum Contractors*, *supra*; *Bartenders Assn. of Pocatello*, 213 NLRB 615, 652 (1974). In order to overcome the presumption and meet its burden of proof, the presenting party must establish either that the union no longer, in fact, enjoys majority representative status or that it (the moving party) has a reasonably based good-faith doubt as to the continued majority status of the union. *NLRB v. Pioneer Club*, 546 F.2d 828 (9th Cir. 1976); *Chicago Magnesium Casting Co.*, 256 NLRB 668 (1981); *Sahara-Tahoe Hotel*, 229 NLRB 1094 (1977), *enfd.* 581 F.2d 767 (9th Cir. 1978). In the former circumstance, "an employer may not avoid its duty to bargain by relying on any loss of majority status attributable to its own unfair labor practices." *Master Slack Corp.*, 271 NLRB 78, 84 (1984).²⁸ Regarding the latter, "such doubt must be raised in a context free of unfair labor practices." *Guerdon Industries*, 218 NLRB 658, 659 (1975).²⁹ In either circum-

stance, the scope of the unlawful conduct has long been considered by the Board to encompass prior unremedied unfair labor practices of such a serious nature so as to have a lasting and detrimental impact upon bargaining unit employees. *Naylor, Type & Mats*, 233 NLRB 105 at fn. 1 (1977); *King Radio Corp.*, 208 NLRB 578, 583 (1974); *Olson Bodies, Inc.*, 206 NLRB 779 (1973). Further, contrary to the urging of counsel for Respondent, "[the Board applied] the standards governing previously established bargaining relationships rather than those relating to initial organization situations" in considering the types of unfair labor practices required to nullify a loss of majority status or render impossible the existence of the aforementioned good-faith doubt. *Nu-Southern Dyeing & Finishing*, 179 NLRB 573 at fn. 1 (1969). Finally, an employer violates Section 8(a)(1) and (5) of the Act if it withdraws recognition from a union, which is the collective-bargaining representative of its employees, in a context of existing or prior unremedied unfair labor practices as described above. *Robertshaw Controls Co.*, 263 NLRB 958 (1982); *Chicago Magnesium Castings Co.*, *supra*.

It is clear to me that, notwithstanding whatever precipitated Respondent's withdrawal of recognition from the Union on September 6 or the context within which it was done, the initial, overriding consideration must be whether the parties reached an enforceable agreement in October 1983; for, if so, the Union's presumption of majority status continues during its lifetime. *Petroleum Contractors*, *supra*. On this point, without recitation of the underlying facts or legal analysis, the Board concluded "that when the Union unequivocally accepted the Respondent's final offer on 11 October, an enforceable contract was formed and the Respondent was thereafter obligated to execute and abide by that contract" and ordered that Respondent "execute and give retroactive effect to the parties' agreement, on request by the Union." 277 NLRB at 769-770. Inasmuch as the Board required that Respondent give retroactive effect to the parties' contract and as the agreement is for a period of 3 years, it follows that the Union's presumption of majority status was in effect at the time Respondent withdrew recognition of such from the Union on September 6, 1984. Put another way, it would be contrary to the policies and purposes of the Act and would permit Respondent to profit from its own unfair labor practices if I were to conclude that the withdrawal of recognition was lawful, occurring as it did at a time when Respondent was unlawfully refusing to execute and abide by a previously agreed-on, enforceable contract.³⁰ Accordingly, I

²⁸ While Respondent's counsel is correct that the cases cited in support of the quoted principle in the judge's decision are good-faith doubt cases, the principle was adopted by the Board and, therefore, is the law of the Board until modified or reversed, an unlikely occurrence given the logic of such a holding.

²⁹ Such unfair labor practices must be "of such a character as to either affect the union's status, cause employee disaffection, or improperly affect the bargaining relationship itself." *Guerdon Industries*, *supra* at 661. This

appears to be the identical standard applied to the context of an asserted loss of majority support. *Master Slack Corp.*, *supra* at 84.

³⁰ Respondent asserts that the withdrawal of recognition was lawful as the Union had, in fact, lost its status as the majority representative of the bargaining unit employees and as, at least, it possessed a good-faith doubt of the Union's continuing status. Such are predicated solely on the petition that was submitted to Gary Johnson by employee Clouse on September 4. With regard to the sufficiency of this document as support for Respondent's conduct of withdrawing majority status recognition from the Union, I note initially that such petitions alone may, indeed, form the basis for such assertions. *Master Slack Corp.*, *supra*; *Hydro Conduit Corp.*, 254 NLRB 433 (1981); *Guerdon Industries*, *supra*; *American Express Reser-*

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find that Respondent engaged in conduct violative of Section 8(a)(1) and (5) of the Act by withdrawing recognition from the Union on September 6.

vations, 209 NLRB 1105 (1974). In the case of an asserted actual loss of majority support, evidence, in fact, of such must be established; while in the case of an asserted good-faith doubt, the employer "does not bear the burden of proving that an actual numerical majority opposes the Union." *Softa, Inc.*, 268 NLRB 159, 160 (1983). Without regard to numerical equations, however, the General Counsel and the Union dispute the existence of any basis for attacking the latter's majority status, asserting that the language of the Chase petition is, at best, ambiguous and that Respondent's own conduct fostered and caused the signing employees' disaffection from the Union. After considering the language of the petition, I am of the view such was not at all concerned with the Union continuing to be the collective-bargaining representative of Respondent's employees in the bargaining unit. Thus, while the concluding words of the petition are, "We must therefore insist on a majority rule basis; that [the Union] not be considered our bargaining agent," the circumstances surrounding the solicitation of signatures and the petition's language, as a whole, do not support the meaning attributed to the concluding phrase by Respondent. As to the context within which the petition signatures were solicited, the record establishes that, during the first 2 weeks in August, of great concern to the employees of Respondent who were not union members was that they would not be permitted by the Union to participate in the ratification vote for Respondent's new contract proposal. This concern was exacerbated by what occurred at the two August 9 union meetings at which union members apparently voted to exclude nonmembers from voting; by word of the result of the meetings spreading rapidly among the employees at the plant; by Union President Hicks not disavowing what nonmember employees believed was the result of the voting at the two union meetings; and, most significantly, by the posting of a notice on a plant bulletin board by Respondent, the notice not only confirming what the nonmembers believed but also stating as a fact that the Union would "only allow members in good standing to vote on the company's offer." Within 4 days, approximately 70 bargaining unit employees executed R. Exh. 5, the Chase petition. That the petition and the apparent denial to nonmembers of an opportunity to participate in the ratification process were intertwined is clearly seen from the uncontroverted testimony of employee James Baize who stated that Chase, while soliciting his signature, said that "he wanted me to sign it . . . because . . . the people who signed it should have the right to vote for the contract."

Likewise, when viewed as a whole, the language of the petition supports the view that it was meant to precipitate an employee ratification vote on Respondent's proposed contract. Thus, the petition bears the heading, "Re: IWA 3-6 labor contract offer"; states the signers' "dissatisfaction and disenchantment over the so-called 'bargaining rights' of the minority of Timber Products employees belonging to [the Union]"; and complains that the Union "in the most recent contract offer has totally denied us, the majority of employees, any voice whatsoever." It is in the foregoing context that the petition concludes with the words, "We must therefore insist on a majority rule basis; that [the Union] not be considered our bargaining agent." In my view, given the circumstances surrounding the solicitation of the signatures and Respondent's own role in confirming nonunion members' concerns, a likely—and correct—interpretation of the final phrase is that an asserted majority of the bargaining unit employees desired an opportunity to themselves accept or reject Respondent's proposed contract without the participation of the Union in the process. While concededly the exact meaning of the petition language is not free from doubt, the issue, in these circumstances, is whether such privileged Respondent's reliance on it to withdraw recognition from the Union as the majority representative of its plant employees. In a different, but related, context, the Board concluded that an employer violated Sec. 8(a)(1) and (5) of the Act when it refused to execute a previously agreed-on contract and insisted that the contract expire with a union's certification year. In so finding, the Board rejected, as without merit, the employer's defense that the union no longer represented a majority of its employees. The employer had relied on a letter, executed by a majority of the employees in the bargaining unit, urging it not to ratify the contract. Noting that the letter did not specifically express the signer's opposition to continued representation by the Union, the Board found that the employer "lacked objective evidence of the loss of majority support" necessary to enable it to lawfully refuse to bargain. *Crestline Memorial Hospital Assn.*, 250 NLRB 1439, 1440 (1980). Likewise, given what I perceive as the probable intent of the petition and the facts that such repre-

2. The implementation of the employee handbook

There is no dispute that the new handbook, which was distributed by Respondent to bargaining unit employees in September 1984, and the changes in the employees' terms and conditions of employment, which were implemented therein, were accomplished without giving prior notice to or affording the Union an opportunity to bargain. In accord with the recent holding of the Board, the imposition of the unilateral changes was done at a time when Respondent was obligated to execute and abide by the terms of a collective-bargaining agreement, embodying the terms of a final offer that was accepted by the Union on October 11, 1983. Respondent's counsel conceded that, if Respondent's withdrawal of recognition from the Union was unlawful, the implementation of the unilateral changes (including a solicitation-distribution rule, a new bulletin board policy, new overtime and seniority provisions, new vacation eligibility rules, a new wage rate for certain jobs, and new job bidding procedures) was likewise unlawful. I have previously concluded that, in view of the Board's findings and requirement that Respondent execute and give retroactive effect to its agreement with the Union, Respondent, in fact, acted unlawfully when it withdrew recognition from the Union. In these circumstances, at the time Respondent implemented the aforementioned changes in employees' terms and conditions of employment, it was under an obligation to recognize and bargain with the Union. Therefore, Respondent violated Section 8(a)(1) and (5) of the Act by imposing the changes without giving prior notice to or affording the Union an opportunity to bargain. *NLRB v. Katz*, 369 U.S. 736 (1962).³¹ Further with regard to

sent the sole basis for Respondent's assertions regarding the Union's continued majority status and that Respondent, to some extent, precipitated the petition, I conclude that Respondent lacked the requisite evidence of employee desire to no longer be represented by the Union to enable it to withdraw recognition from the Union on any numerical basis.

³¹ The General Counsel also contends that, by applying the unilateral implemented changes in the working conditions and other terms and conditions of employment of the bargaining unit employees to reinstated former strikers and, in effect, treating them as new employees, Respondent discriminated against them in violation of Sec. 8(a)(1) and (3) of the Act. In this regard, Respondent concedes that, in applying the newly implemented employee handbook working conditions to former strikers who were reinstated after September 13, it was guided by the seniority provision, reading, "An employee rehired after a break in service of more than one year shall be treated as a new employee under these policies." Utilizing it, Respondent terminated the seniority rights of 21 former strikers who were reinstated after September 13 and gave each a seniority date corresponding to the day he was recalled to a permanent position. Also utilizing this seniority rule, Respondent treated former strikers as new or temporary employees if the individuals were recalled for temporary work prior to being given full-time positions. A similar company policy was at issue in *Brooks Research & Mfg.*, 202 NLRB 634 (1973). Although utilized by that employer to deny the reinstatement rights of former strikers, as herein, that company's rule similarly terminated seniority rights after layoff for a specified time period. The Board concluded that application of the rule, either so as to deny them reinstatement or to terminate their prior company seniority, to the economic strikers discriminated against them in violation of Sec. 8(a)(1) and (5) of the Act. Respondent herein utilized its break-in-service rule not to deny former strikers reinstatement but to deprive them of their prior seniority. Such is clearly violative of Sec. 8(a)(1) and (3) of the Act. *Id.*; *MCC Pacific Valves*, 244 NLRB 931, 935 (1979). Further, treating former strikers as new employees, as did Respondent, on reinstating them to temporary jobs discriminated against them in violation of Sec. 8(a)(1) and (3) of the

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Respondent's unilateral changes, there is no dispute that, concomitant with withdrawing recognition from the Union, Respondent severely restricted Union Business Agent Dawson's access to the plant by implementing a previously unenforced requirement that he obtain a pass issued by Alex Austin or Gary Johnson. While arguably such a restriction was in accord with the wording of the parties' expired contract, it clearly represented a change from Respondent's existing practice, which required only that Dawson obtain an admittance form from a receptionist and give it to a security guard. Further, inasmuch as Joseph Gonyea thought it necessary to send a letter, which detailed Dawson's new access right, to the Union, it is clear that Respondent recognized that it was altering an existing practice. In such circumstances, I find that Respondent engaged in conduct violative of Section 8(a)(1) and (5) of the Act by altering an existing practice regarding union officials access to the plant facility without prior notice to or bargaining with the Union.

3. Respondent's failure to reinstate former strikers

Based on the allegations of the amended consolidated complaint, the General Counsel contends that Respondent engaged in conduct violative of Section 8(a)(1) and (3) of the Act by terminating the recall rights of former strikers pursuant to the unilateral and unlawful implementation of its new seniority rule in September 1984, by hiring the four laid-off White City plant employees rather than recalling qualified former strikers to form a spreader machine crew in October, by terminating the recall rights of former striker Jose Acosta, and by refusing to reinstate former striker Michael Duro after he had accepted an offer of a temporary job. The applicable principles of law that govern in such circumstances are well known and of longstanding duration. Thus, it is clear that economic strikers, such as herein involved, retain their status as "employees" within the meaning of Section 2(3) of the Act during a strike and, at its conclusion, have a right to be reinstated to their former positions. Any employer that refuses or delays the reinstatement of former economic strikers acts in violation of Section 8(a)(1) and (3) of the Act unless it can establish "legitimate and substantial business justifications" for its conduct. *NLRB v. Fleetwood Trailer Co.*, 389 U.S. 375, 380-381 (1967); *NLRB v. Great Dane Trailers*, 388 U.S. 26, 34 (1967); *Laidlaw Corp.*, 171 NLRB 1366, 1369 (1986), *enfd.* 414 F.2d 99 (7th Cir. 1969). Prior to *Fleetwood Trailer Co.* and *Great Dane Trailers*, the Supreme Court ruled that a struck employer has a legitimate and substantial right to continue "his" business "by supplying places left vacant by strikers. And he is not bound to discharge those hired to fill the places of strikers, upon the election of the latter to resume their employment." *NLRB v. Mackay Radio Co.*, 304 U.S. 333, 345-346 (1938). However, at the conclusion of a strike, even if permanent replacements have been hired for the strikers, on the departure of the replacements, the former

strikers are entitled to reinstatement to their former jobs unless they have acquired substantially equivalent employment elsewhere or unless their employer is able to sustain its burden of proof that the failure to recall was justified by legitimate and substantial business reasons. *Fleetwood Trailer Co.*, *supra*; *Laidlaw Corp.*, *supra*. In fact, not only are former strikers entitled to vacant jobs, "it is incumbent upon [their employer] to seek them out as positions [are] vacated." *Laidlaw Corp.*, *supra* at 1369. Unless an employer sustains its burden of proof, a refusal to reinstate employees after an economic strike constitutes an unfair labor practice notwithstanding the absence of animus or bad faith; for such conduct "discourages employees from exercising their rights to organize and to strike guaranteed by Sections 7 and 13 of the Act." *Fleetwood Trailers Co.*, *supra* at 378.

Turning to the General Counsel's initial contention that Respondent violated Section 8(a)(1) and (3) of the Act by terminating the recall rights of former strikers pursuant to implementation of the employee handbook seniority provision ("An employee rehired after a break in service of more than one year shall be treated as a new employee under these policies."), it is clear that such refers to the status of the 52 individuals who were on layoff status at the commencement of the strike on August 19, 1983. The General Counsel contends that they became, in effect, economic strikers who were entitled to preferential reinstatement. This assertion is based on the letter, dated September 21, 1983, and mailed by Respondent to all employees, including strikers and those on layoff status when the strike began. The letter informed the recipients that Respondent would be hiring permanent replacements for the strikers and suggested "you contact us about returning before a replacement is hired. An early decision on your part is in the best interests of all concerned." It is contended that the solicitation converted all those laid-off individuals, who did not accept the offer and return to work, to the status of economic strikers, entitling them to the same reinstatement rights had by those employees who actually engaged in the work stoppage on August 19. In arguing that the foregoing "is an afterthought makeweight argument," counsel for Respondent contends that it is a matter of speculation whether any of the laid-off employees joined the strike, that Respondent had no knowledge that any, in fact, joined the strike, and that the Union never alerted it to the fact that the Union considered the individuals to have been strikers. As support for their respective positions, counsel for the Union and counsel for Respondent both cite³² *Brinkerhoff Signal Drilling Co.*, 264 NLRB 348 (1982). In that case, several individuals were on layoff status at the start of an economic strike. Shortly after the strike commenced, agents of the employer placed telephone calls to the individuals in order to offer

Act. *MCC Pacific Valves*, *supra* at 936. Finally, I conclude that Respondent also unlawfully discriminated against reinstated former strikers by assigning them a \$7.28 hourly wage rate. The employees must be permitted to earn the same wages and benefits as before the strike. *Id.* at 935.

³² The General Counsel cites only *Burner Systems International*, 273 NLRB 954 (1984), in support of her contention. Therein, a case involving a withdrawal of recognition, the Board counted among those who supported the union and who refrained from working during the strike individuals who were on layoff status at the time of the strike. Nowhere therein does the Board state that the laid-off employees should be considered as strikers, notwithstanding support for the union.

them employment during the strike. Many of the laid-off employees said they would refuse to return during the strike, and the employer was unable to speak to others. Of this latter group, several learned of the offer but did not return to work. I the administrative law judge found that, before any alleged discriminatee would be considered a striker and thereby eligible for preferential employment rights, he must "engage in conduct which was reasonably calculated to alert" the employer he was, in fact, a striker. Utilizing this test, the judge found that those individuals who verbally refused the offer manifested an intent to join the strike and were, in fact, strikers but that laid-off employees who did not speak to the employer's agents were not strikers even though they may not have returned to work. The Board concluded that, under the circumstances, "given the ambiguity caused by the employees' inactive status at the time the strike began," it was reasonable to require the General Counsel to establish that the individuals engaged in some sort of overt conduct sufficient to give the respondent "reasonable notice" of their strike activity. *Id.* at 349 fn. 5.

At the outset, the substance of Respondent's letter indicates that, by design, it was intended for those who actually concertedly ceased working on August 19, 1983, and that it was meant as a solicitation to them to abandon the strike rather than be permanently replaced. Nevertheless, as it was also sent to individuals who were on layoff status at the time of the strike, it is reasonable to conclude—and I do—that Respondent meant its solicitation to cross the picket line and work during the strike to include such individuals. In these circumstances, although communication with the laid-off individuals was in writing rather than verbal as in *Brinkerhoff Signal Drilling*, I find the same rationale to be applicable to the instant factual context. That is, given to layoff status of the 52 individuals herein, there is obvious ambiguity as to the status of each during the strike and on receipt, which I presume, of Respondent's solicitation to return. None of the 52 individuals were called as witnesses and none testified regarding their willingness to work during the strike. In these circumstances, I believe it was incumbent on the General Counsel to have established that each of the individuals engaged in some sort of overt action, signifying to Respondent that, rather than accepting the solicitation to work during the strike, he was joining it and withholding his services. As to this, the uncontroverted—and credited—testimony of Dennis Dawson was that "over 20" of the individuals engaged in picketing during the strike, and I find that such was sufficient to constitute the requisite notice to Respondent to make it reasonably aware that these individuals supported and joined the strike. Further, it would make no difference, in my view, whether such picketing occurred prior to or subsequent to receipt of Respondent's solicitation to return; for, in either circumstance, the individual was signifying his intent to join the strike. In *Connecticut Distributors*, 255 NLRB 1255 (1981), an individual received employment simply by reporting to work. While he was on vacation, the employer's workers engaged in a strike. While not supporting the strike, the individual nevertheless did not cross the picket line to work during

the strike as he did not want to violate a picket line. The Board found him to be a striker as, given the nature of the work, his failure to report was such that "[the company] reasonably was aware that [he] was striking and withholding his services." *Id.* at 1267. Clearly, given the solicitation herein to all laid-off employees to return to work and the fact that "over 20" engaged in actual picketing, the same conclusion is mandated. That Respondent may not, in fact, have been aware of the individuals' picketing does not, I think, detract from my finding that such constituted reasonable notice to Respondent that each was, in fact, striking. This is so inasmuch as the emphasis of *Brinkerhoff Signal Drilling*, *supra*, is on the employees' overt actions, which reasonably would make the employer aware, and not on the employer's actual knowledge. Respondent next contends that none of these individuals unconditionally offered to return at the cessation of the strike and, therefore, none are yet entitled to preferential reinstatement. This assertion is without merit as Business Agent Dawson's offer to return was on behalf of "each and every employee . . . who has participated in the strike." He specified no particular individuals. Based on the foregoing, I conclude that the in excess of 20 individuals, who were on layoff status prior to the strike, were recipients of Respondent's solicitation to return to work during the strike, and manifested their intent to join the strike by engaging in picketing during it, assumed the status of economic strikers.

It follows, then, that, on cessation of the strike, each was entitled to reinstatement to any available job for which he was qualified. *Fleetwood Trailers Co.*, *supra* at 381. Further, there are no time limits on the reinstatement rights. *Brooks Research Mfg.*, *supra*. Nevertheless, pursuant to implementation of the new seniority regulations in September 1984, Respondent expurgated the employment rights of all individuals who had been laid off for at least 12 months, including those who, I have found, were former economic strikers. In this regard, it was conceded by Respondent that, while all the acknowledged former strikers had been reinstated to permanent jobs by February 1985, none of those employees on layoff status at the time of the strike, including those who, I believe, assumed the status of economic strikers, was ever recalled to a permanent job. In these circumstances, by terminating the reinstatement rights of these approximately 20 individuals in September 1984 and by treating them as merely laid-off employees, Respondent engaged in conduct violative of Section 8(a)(1) and (3) of the Act. *Brinkerhoff Signal Drilling*, *supra*; *Brooks Research & Mfg.*, *supra*.³³

Turning to Respondent's alleged unlawful failure and refusal to recall former strikers Ragan, Clouse, and Terry Johnson in late October for work on the newly established swing shift spreader machine crew, Respondent asserts, in effect, that it possessed legitimate and substantial business reasons for bypassing them and hiring four individuals who had been laid off from its White City plant, where they had constituted a spreader machine crew. In assessing the validity of Respondent's defense, I

³³ Respondent offered no business justification for this conduct.

am guided by my understanding that its burden of proof in this regard is substantial inasmuch as the failure to reinstate economic strikers inherently adversely impacts on employee rights under the Act. *Fleetwood Trailers Co.*, supra. At the outset, I note that Ragan, Terry Johnson, and Tim Smith, who had previously been recalled by Respondent, are the former strikers, who, it is contended, could have been utilized by Respondent as the new spreader machine crew; that each had prior experience working on the machine; and that each apparently was ready and willing to perform that work in October. The crux of Respondent's business justifications for not reinstating Ragan, Clouse, and Johnson and combining them with Smith, who had applied for the job, was that none were qualified, on an individual or group basis, to do the work; however, analysis of the record evidence has convinced me of the fallaciousness of such assertions. Thus, with regard to Tim Smith and Terry Johnson, Plywood Superintendent Rosendahl, who failed to impress me as being a particularly candid and forthright witness, stated that each, in effect, had had limited experience working on the spreader machine. I fail to understand the significance of their admitted limited experience on the spreader machine inasmuch as Respondent heretofore had always formed spreader machine crews from within the bargaining unit, presumably utilizing individuals with limited experience on the machine, and trained the men in the work. As to Terry Ragan, Rosendahl's testimony was contradictory—he initially stated that Ragan was unqualified as he had not “worked on there that long” but later asserted he “just didn’t understand what the job pertained to” and “he just didn’t know what went where.” Indeed, as Ragan's name was left off Gary Johnson's list of unrecalled strikers and others not working as of October 15, I do not believe Rosendahl considered him for the spreader crew at all. Concerning Gerald Clouse, I note that Rosendahl and Foreman David Twedell generally were corroborative as to the former striker's liabilities on the spreader machine when he performed that job for a 9-month period in 1981. However, the fact remains that, despite what appears to be problems with mislays and warnings regarding the quality of his work, Clouse was never removed from the spreader job by Respondent, ceasing to perform that work only because “they shut down a swing shift spreader crew.” Moreover, the record is clear that Rosendahl had limited personal knowledge of the three verbal warnings allegedly given to Clouse by his supervisor Rod Graham. In fact, I give no credence to these as all are in the handwriting of Graham and as Respondent neither called Graham as a witness nor explained the reason for his failure to testify.³⁴ This was of critical importance as both

Rosendahl and Twedell testified that Graham was Clouse's immediate supervisor while he worked on the spreader machine; in these circumstances, Graham would have been the foreman most knowledgeable about any of Clouse's asserted deficiencies in performing that job.³⁵ Further, the manner of selection of the White City employees to fill the positions on the new spreader crew convinces me of Respondent's perfidy toward the eligible former strikers. Thus, Rosendahl admitted that he did so merely on being informed of their availability and after speaking to them. There is no indication that he ever evaluated their abilities to perform the work or compared the abilities and qualifications to those of the four former strikers. In short, I am convinced that Respondent has failed to sustain its burden of proof that its failures to reinstate former strikers Ragan, Clouse, and Terry Johnson for work on the new spreader crew were for legitimate and substantial business reasons and that the asserted rationale was but an afterthought, designed to avoid the finding of unfair labor practices relating to Respondent's hiring of the former White City spreader machine crew to staff its new swing shift spreader crew without considering the availability of former strikers. *Aluminum Cruisers*, 234 NLRB 1027, 1030-1033 (1978). I, therefore, find the conduct toward Clouse, Ragan, Johnson, and Smith violative of Section 8(a)(1) and (3) of the Act.

Regarding the amended consolidated complaint allegations as to former striker Jose Acosta, Respondent's counsel asserts that the employee placed “numerous and highly-limiting conditions upon his offer to return” and that “the termination was motivated solely by the severe limitations imposed by Mr. Acosta on the type of work he was doing.” The record establishes that, at the time of the August 19, 1983 strike, Acosta was a dry feeder on the day shift; that, when he was reinstated on September 27, 1984, he was given a temporary job on the day shift; and that the job that Acosta refused, due to medical reasons resulting from prior surgery, and which act precipitated his termination, was another temporary job—on the graveyard shift. Contrary to the reason advanced by counsel, in his posthearing brief, as Acosta's termination, I credit the former striker, who was a most candid and straightforward witness, that Gary Johnson told him that the sole basis for his discharge was his refusal to perform the offered job—“If anybody refuses any work, we'll terminate him.”³⁶ In accord with my factual finding, it is well settled that a former economic striker is entitled to wait for reinstatement to a position “substantially equivalent” to his prestrike position and that an employer vio-

³⁴ While Twedell otherwise appeared to be testifying in an honest and straightforward manner, I do not credit his testimony regarding the work of Clouse on the spreader machine. I found it hard to believe that he observed the work of Clouse, Smith, and Johnson as often and as closely as he claimed given his other duties, the fact that they were not even working on his own shift, and as Graham, Clouse's immediate supervisor, would have been the one to be scrutinizing that crew's work. In short, I do not place any reliance on Twedell's corroborative testimony of that of Rosendahl. Further, even assuming the truthfulness of his recollections regarding Clouse's work on the spreader, the fact cannot be stressed

enough that the latter was allowed to continue working on the spreader notwithstanding his asserted problems.

³⁵ Rosendahl asserted that he, in fact, on one occasion made Clouse and his partner twice tear apart plywood panels as they were mislaid. Clouse denied this, and, as in contrast to Rosendahl, I found Clouse to be a candid witness, his denial is credited. Further, his explanation that Rosendahl would direct any criticisms of Clouse's crew to Graham who, in turn, would inform Clouse and the others of Rosendahl's criticism appears to be a logical one and is likewise credited.

³⁶ I further credit Acosta that Johnson told him he did not believe the former striker's medical excuse for refusing the proffered job. Johnson conceded that such was, indeed, his feeling at the time.

lates Section 8(a)(1) and (3) of the Act by terminating such an individual's employment status, thereby ending his preferential reinstatement rights, for having refused an offer of a job that is not substantially equivalent. *Providence Medical Center*, 243 NLRB 714, 744 (1979); *Burton Parsons & Co.*, 242 NLRB 487, 490 (1979). Herein, both counsel for the General Counsel and counsel for the Union contend that the proffered offer of a job cleaning tanks on the graveyard shift to Acosta was not an offer of a substantially equivalent job. I agree that the offer was not to a substantially equivalent job as it involved temporary work on a shift different from that which Acosta worked prior to the strike. Thus, the Board has held that the offer of work on a different shift is not substantially equivalent. *Harvey Engineering & Mfg. Corp.*, 270 NLRB 1290, 1292 (1984); *MCC Pacific Valves*, supra at 944-945. Also, when Acosta was recalled to a temporary position, he was not given the same benefits as full-time employees, and the Board has held that a job is not substantially equivalent if such position does not permit employees to earn the same wages and benefits as before the strike. *MCC Pacific Valves*, supra at 935. In the foregoing circumstances, I find the termination of Acosta to have been violative of Section 8(a)(1) and (3) of the Act. *Providence Medical Center*, supra.

Turning to the matter of Respondent's conduct vis-à-vis former striker Michael Duro, the record establishes that Duro informed Gary Johnson that he would accept any job with Respondent, including a temporary one; that Johnson subsequently offered and Duro accepted a temporary job; that, as a result, Duro gave his employer notice of his intention to quit; that Johnson later rescinded the job offer, explaining that the temporary position no longer existed as "Art Bogart got released unexpectedly and returned to work"; and that Duro admitted understanding Johnson to mean that the temporary job, which the former striker was to have been given, was filled by the individual who normally had that position. In the posthearing brief, the General Counsel argues that Duro "was entitled to reinstatement after being . . . told to report for work or at least entitled to a full explanation of why he was not being reinstated." Concerning the latter point, of course, Duro admitted being aware of the stated reason for the rescission of Respondent's offer, and there is no evidence to controvert the testimony of Gary Johnson in that regard. Regarding the former point, the General Counsel cites no case support for this contention. I have been able to locate none, and the Board has not as yet (nor is it likely to do so) required an employer to provide another job for a former striker if, through no fault of the employer, a proffered position no longer exists. Further, the record establishes that Respondent recognized its legal obligations by reinstating Duro in mid-January 1985, and there is no evidence that the reinstatement was unlawfully delayed. While it is not difficult to sympathize with the plight of Duro, there is not a scintilla of record evidence that Respondent discriminated against the former striker in violation of Section 8(a)(1) and (3) of the Act. I shall, therefore, recommend that the allegation of the amended consolidated complaint, concerning Duro, be dismissed.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. All employees of Respondent, including temporary and part-time employees; excluding office clerical employees, professional employees, guards and supervisors as defined in the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since at least 1977, the Union has been, and is now, the exclusive representative of employees in the above appropriate unit for purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By withdrawing recognition from and refusing to bargain with the Union since September 6, 1984, Respondent has refused to bargain in violation of Section 8(a)(1) and (5) of the Act.

6. By, since about September 6, 1984, unilaterally, without giving prior notice to or affording the Union an opportunity to bargain, limiting the Union's right of access to its plant, Respondent refused to bargain in violation of Section 8(a)(1) and (5) of the Act.

7. By, about September 13, 1984, unilaterally, without giving prior notice to or affording the Union an opportunity to bargain, changing the terms and conditions of employment of the employees in the above-described appropriate unit through implementation of new employee working conditions, set forth in an employee handbook, the changed working conditions including, but not limited to, a new solicitation-distribution rule; a new grievance procedure; a new bulletin board policy; mandatory overtime for certain employees; new seniority provisions, including the loss of employee status and company seniority after a break in service of more than 1 year; new vacation eligibility standards; a new policy for the designation of floating holidays; and a new \$7.28 wage rate for individuals who were hired after August 19, 1983, or who were recalled after a break in service for more than a year, Respondent refused to bargain in violation of Section 8(a)(1) and (5) of the Act.

8. By, since about September 13, 1984, denying reinstated former strikers their prestrike company seniority, by reinstating them at wage rates lower than what they earned prior to the strike, and by treating these individuals as new hires, Respondent refused to bargain in violation of Section 8(a)(1) and (3) of the Act.

9. By terminating, about September 13, 1984, the employment, seniority, and preferential reinstatement rights of more than 20 unreinstated employees who had been on layoff status at the start of the August 19, 1983 strike, were recipients of Respondent's offer of reemployment dated September 21, and manifested an intent to, and did, in fact, join the strike by picketing during it and who had unconditionally applied for reinstatement at the cessation of the strike, Respondent discriminated against these former strikers in violation of Section 8(a)(1) and (3) of the Act.

10. By failing and refusing to reinstate former economic strikers Gerald Clouse, Terry Ragan, and Terry Johnson, each of whom had unconditionally applied for reinstatement to positions on a swing shift spreader machine crew, thereby delaying their eventual reinstatement, and by failing and refusing to transfer recalled former striker Timothy Smith to a position on the crew, Respondent discriminated against the individuals in violation of Section 8(a)(1) and (3) of the Act.

11. By terminating the reinstatement rights of, and failing and refusing to reinstate, former striker Jose Acosta who had unconditionally applied for reinstatement to his former position or a substantially equivalent one as such became available, Respondent discriminated against the individual in violation of Section 8(a)(1) and (3) of the Act.

12. Unless otherwise stated, Respondent committed no other unfair labor practices.

THE REMEDY

Having found that the Respondent, Rockwood & Company and W. H. Gonyea Trust No. 1-17 d/b/a Timber Products Co., has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

I have found that Respondent violated Section 8(a)(1) and (5) of the Act by withdrawing recognition from the Union as the collective-bargaining representative of certain of its employees. The Board has recently ordered Respondent to, on request, execute and give retroactive effect to a collective-bargaining agreement as to which agreement was reached on October 11, 1983. The agreement was for a term of 3 years. Accordingly, I shall recommend that Respondent rescind the withdrawal of recognition and recognize and bargain with the Union as the exclusive representative for purposes of collective bargaining of its employees in the above-described appropriate unit. I have found that Respondent further engaged in conduct violative of Section 8(a)(1) and (5) of the Act by unilaterally limiting the right of union officials to have access to the plant and by unilaterally implementing the above-described new and changed bargaining unit employees' terms and conditions of employment, as set forth in its employee handbook. Accordingly, I shall recommend that Respondent be ordered to cease and desist from giving effect to any of the unlawful, unilateral changes and reinstate the terms and conditions of employment of the employees that were in effect about September 13, 1984. In addition, I shall recommend that Respondent be ordered to make its employees whole for any, and all, wages and benefits lost as a result of the unlawful, unilateral changes, with such computed in the manner set forth in *F. W. Woolworth*, 90 NLRB 289 (1950), with interest thereon as calculated and explicated by the Board in *Isis Plumbing Co.*, 138 NLRB 716 (1962), and *Florida Steel Corp.*, 231 NLRB 651 (1977). Next, I have found that Respondent, since September 13, 1984, unlawfully discriminated against reinstated former economic strikers, in violation of Section 8(a)(1) and (3) of the Act, by denying to these individuals their prestrike seniority, by treating them as new

employees in certain circumstances, and by paying them at a reduced wage rate, established at the time of the aforementioned unilateral changes. As a remedy for such unlawful conduct, I shall recommend that Respondent restore to all former economic strikers, who were recalled subsequent to September 13, 1984, their prestrike company seniority dates, reimburse them, in the manner set forth above, for any out-of-pocket losses incurred as a result of being treated as new hires while performing temporary assignments and, to the extent not done above and in the manner set forth above, make them whole for any wages lost as a result of the discrimination against them. I have found that, in excess of 20 of those individuals on layoff status at the commencement of the August 19, 1983 strike assumed the status of strikers during it; that the Union's unconditional offer to return to work encompassed them; that they, therefore, were entitled to the preferential reinstatement rights of former economic strikers; and that Respondent violated Section 8(a)(1) and (3) of the Act by terminating their employee and reinstatement rights on institution of its unlawfully implemented loss of seniority and employee status policy in September 1984. As a remedy for this conduct, I have already recommended that Respondent be ordered to rescind its unilaterally implemented seniority rules. I further shall recommend that Respondent be ordered to place each individual³⁷ on a preferential hiring list; that the reinstatement rights of each continue in accordance with the applicable principles of law set forth in *Fleetwood Trailers Co.*, supra, and *Laidlaw Corp.*, supra; and that, as vacancies occur, whether due to the departure of employees, increases in the work force, or otherwise, those of the individuals who are qualified for reinstatement be offered such positions unless they have obtained regular and substantially equivalent employment. Further, it shall be recommended that, for any of the individuals who would have been reinstated between September 1984 and the date of this decision, Respondent be ordered to reinstate the former striker to the position in which he would have been placed, had he been recalled, without prejudice to his seniority and other rights and privileges and made whole for any loss of earnings, in the manner set forth above, he may have suffered by reason of Respondent's failure to reinstate him. Moreover, I have found that Respondent unlawfully delayed the eventual reinstatement of former strikers Gerald Clouse, Terry Ragan, and Terry Johnson by denying them, and former striker Tim Smith, the opportunity to form a new spreader machine crew on October 22. I, therefore, recommend that Clouse, Ragan, and Johnson be made whole for any wages or benefits lost, in the manner set forth above, from that date until their respective eventual reinstatements and that Clouse, Ragan, Johnson, and Smith be made whole for any wages lost as a result of being deprived of an opportunity to work on the spreader machine from October 22, 1984, until the date of this decision. I further recommend that Respondent be ordered to afford these individuals preferential

³⁷ These individuals were not identified in this record. I leave it to the compliance stage of this proceeding to identify which laid-off employees engaged in picketing during the strike.

consideration for transfer to spreader machine jobs if they so desire. Next, as to Jose Acosta. I found that Respondent unlawfully terminated his status as an employee and former economic striker about October 4, 1984. Accordingly, it shall be recommended that Respondent treat him in the same manner as the other unlawfully terminated former economic strikers and make him whole for any losses that he may have incurred as a result of the discrimination against him in the manner set forth above. Finally, given the Board's prior finding of unfair labor practices, I shall recommend a broad cease-and-desist order herein.³⁸

On these findings of fact and conclusions of law and on the entire record, I issue the following recommendation³⁹

ORDER

The Respondent, Rockwood & Company and W. H. Gonyea Trust No. 1-17 d/b/a Timber Products Co., Medford, Oregon, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from and refusing to recognize and bargain with Local 3-6, International Woodworkers of America, AFL-CIO, CLC as the exclusive bargaining representative of its employees in the following appropriate unit:

All employees, including temporary and part time employees; excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) Unilaterally, without giving prior notice to or affording the Union, on behalf of the above employees, an opportunity to bargain, changing the terms and conditions of employment of employees in the above appropriate unit.

(c) Discriminating against former economic strikers who were reinstated subsequent to September 13, 1984, by denying to them their prestrike seniority, treating them as new employees, and paying them wages below what they earned prior to the strike.

(d) Terminating the employment, preferential reinstatement, and seniority rights of former economic strikers who were on layoff status at the time of the 1983 strike to whom it sent letters soliciting their return to work during the strike, and who engaged in picketing during the strike, thereby manifesting their intent to join the strike and not return to work.

(e) Delaying the reinstatement of former economic strikers Gerald Clouse, Terry Ragan, and Terry Johnson and discriminating against them and former economic striker Tim Smith by not affording the above-named employees the opportunity to form a swing shift spreader machine crew.

(f) Terminating the employment, preferential reinstatement, and seniority rights of former economic striker Jose Acosta.

(g) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain collectively with the Union as the exclusive representative of Respondent's employees in the above appropriate unit.

(b) Reinstatement the terms and conditions of employment of the employees in the above appropriate unit, which were in effect as of September 13, 1984, and make the employees whole for any wages and benefits lost, in the manner set forth in the remedy section of the decision as a result of its unlawful unilateral changes.

(c) Restore to each former economic striker who was reinstated subsequent to September 13, 1984, his prestrike company seniority and make each individual whole, in the manner set forth in the remedy section of the decision for any wages and benefits lost as a result of its discrimination against them.

(d) Rescind its termination of the employment, preferential reinstatement, and seniority rights of the in excess of 20 laid-off individuals whom I have found to be former economic strikers; offer immediate and full reinstatement to any of the individuals who would have been recalled since September 13, 1984; and reimburse any of the latter employees for wages and benefits lost in the manner set forth in the remedy section of the decision.

(e) Reimburse employees Gerald Clouse, Terry Ragan, and Terry Johnson for any wages or other benefits lost in the manner set forth in the remedy section of the decision; make Clouse, Ragan, Johnson, and Tim Smith whole for any wages lost for the period of time each was denied work on the spreader machine in the manner set forth in the remedy section of the decision; and permit the employees preference in consideration for any available spreader machine jobs.

(f) Rescind its termination of the employment, preferential reinstatement, and seniority rights of former economic striker Jose Acosta; offer him immediate and full reinstatement if he would have been reinstated subsequent to about October 4, 1984; and in the latter eventuality make him whole in the manner set forth in the remedy section of the decision.

(g) Remove from its files any reference to the failure to reinstate and the reasons therefor, for each of the above employees and notify each in writing that this has been done and that evidence of the failure to reinstate or the reasons therefor will not be used as a basis for future personnel actions against them.

(h) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

³⁸ *Hickmott Foods*, 242 NLRB 1357 (1979)

³⁹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(i) Post at its plant in Medford, Oregon, copies of the attached notice marked "Appendix."⁴⁰ Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 con-

⁴⁰ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

secutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(j) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER RECOMMENDED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found.